

*United States Court of Appeals  
for the Second Circuit*



**APPELLANT'S  
APPENDIX**



BQs

74-1517

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

-----x  
UNITED STATES OF AMERICA,

Appellee,

-against-

SALVATORE BADALEMENTE  
and HERBERT YAGID,

Appellants.

-----x  
Docket No. 74-1517  
-----x

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APPENDIX TO THE BRIEF  
FOR APPELLANT HERBERT YAGID

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ON APPEAL FROM A JUDGMENT  
OF THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK



WILLIAM J. GALLAGHER, ESQ.,  
THE LEGAL AID SOCIETY,  
Attorney for Appellant  
HERBERT YAGID  
FEDERAL DEFENDER SERVICES UNIT  
606 United States Court House  
Foley Square  
New York, New York 10007  
(212) 732-2971

WILLIAM EPSTEIN,  
Of Counsel

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CRIMINAL DOCKET  
UNITED STATES DISTRICT COURT

JUDGE CARTER

C. Form No. 100 Rev.

73 CRIM. 471

ATTORNEYS

TITLE OF CASE

THE UNITED STATES

vs.

- ) JERRY ALLEN
- ) SALVATORE THOMAS BADALAMENTE 4-11-74
- ) ARTHUR BERARDILLI
- ) JAMES FEENEY 3-8-74
- ) LOUIS STERN, a/k/a Louis Rush 4-11-74
- ) LEONARD TURI 4-16-74
- ) HERBERT YAGID 4-11-74

For U. S.: 264-3938

Social A.J.S. Atty.

Michael C. Eberhardt

For Defendant:

05) STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
S. 2 mailed	Clerk	4/11/74	Riccardo Riccardo	5 -	
S. 3 mailed -4-	Marshal	4/11/74	Yagid Yagid	5 -	5 -
Violation	Docket fee	4/11/74	Allen Allen		
title 18					
cc. 2314,2 transport in interstate Commerce					
counterfeited securities					
(ct.2)					
371 conspiracy so to					
(ct.1) --- TWO COUNTS---					

DATE	PROCEEDINGS
6-21-73	Filed Indictment.
	JERRY ALLEN - SALVATORE T. BADALAMENTE and HERBERT YAGID - B/W's ordered. --
	B/W's issued for above 3 defendants. Cannella, J.
6-21-73	JERRY ALLEN- Deft. present - Bail fixed at \$15,000. P.R.B. - Deft. ordered photographed and fingerprinted. Hearing adj. to June 11, 1973. - Cannella, J.
6-21-73	Allen- Filed P.R.B. in the sum of \$15,000. dtd. 6/1/73.
6-21-73	J. Allen- Filed affdvt. and notice of motion for an order extending defendants bail limits to include the Continent of Europa, Canada and the State of Florida. -- ret. 6-11-73 in Rm 110
6-21-73	J. Allen- Filed memo endorsed on above motion: " Application granted on U.S. Atty's request. Submit order on consent. -- Palieri, J.

## JUDGE CARTER

DATE	PROCEEDINGS
6-13-73	LOUIS STERN and HERBERT YAGID-Filed affdvt & notice of motion for Discovery & inspection <del>to x dismiss</del> Bill of Particulars etc.-Ret. 6-22-73.
6-11-73	ALLEN, BADALAMENTE, BERARDELLI, STERN, TURI and YAGID(at present) plead not guilty Bail cont'd. FEENEY (atty present) plead not guilty. Fingerprinted & Photographed. R.O.R. \$10,000. P.R.B.---Palmieri, J.
6-15-73	JAMES FEENEY-Filed order-Bail limits are extended to allow deft. to travel throughout the U.S., Canada and Europe etc.--Carter, J.
6-18-73	SALVATORE, THOMAS, BADALAMENTE AND LEONARD-Filed affdvt & notice of motion for Discovery and <del>Inspection</del> Inspection, Bill of Particulars etc. Ret. 6-22-73.
6-13-73	SALVATORE THOMAS BADALAMENTE-Filed Warrant for Arrest with Marshal's return-District of N.J.-Deft. arrested 5-22-73-Released same day \$10,000. PRB.
6-13-73	HERBERT YAGID-Filed Warrant for Arrest with Marshal's return-Arrested by FBI Agent Released \$10,000. PRB.
6-11-73	JAMES FEENEY-Filed PRB without security in the sum of \$10,000.
6-19-73	JAMES FEENEY-Filed notice of appearance of Marvin B. Segal 375 Park Ave. N.Y.C. P1 3-7800
6-19-73	JERRY ALLEN-Filed notice of appearance of Feldshuh & Frank, 144 E. 44th St. N.Y.C. 687-8000
6-19-73	LEONARD TURI & SALVATORE BADALAMENTE-Filed notice of appearance of Salvatore Nigrone 233 B'way N.Y.C. Wo 4-8883
6-19-73	LOUIS STERN & HERBERT YAGID-Filed notice of appearance of Paul P. Rao, 233 B'way N.Y.C. Wo 4-8866
6-21-73	Filed Government's notice of readiness for trial.
6-21-73	Jerry Allen- Filed order extending defendants bail limits to include the Continent of Europa, the country of Canada and the State of Florida, during the pendency of his prosecution. The deft. to give notice to the U.S. Atty. prior to his departure from the S.D. of N.Y. and within 48 hours of his return thereto. Carter, J.
7-10-73	Herbert Yagid-Filed affidavit and notice of motion for an order permitting the deft. to extend his bail limits to the Continental U.S.
7-10-73	Herbert Yagid-Filed order on deft's motion to extend bail limits. "Deft's bail limits extended to the Continental U.S. consented by Govt. (mailed notice) Carter, J.
7-16-73	FEENEY- Filed affdvt. and notice of motion (a) inspection of grand jury minutes (b) a bill of particulars (c) to inspect and photograph certain documents. FEENEY- Filed defts. memorandum of law in support of above motion.
7-24-73	BADALAMENTE- Filed defts. affdvt. and notice of motion for an order extending defts. bail limits. - ret. 7-24-73
7-24-73	BADALAMENTE- Filed order extending defts. bail limits to incl. the continental U.S.A. Carter, J.

DATE	PROCEEDINGS
7-26-73	All defts' - Filed Goverments affdvt. in opposition to motions for discovery & inspection, bill of particulars, disclosure of Grand Jury minutes and dismissal.
7-26-73	All defts' - Filed Goverments affdvt. in opposition to defts pre-trial motions.
7-31-73	Jerry Allen - Filed order further extending defts. bail limits to include all of the continental USA
8-6-73	ALL DEFTS - Filed Govts notice of motion for reargument of Court's decision to inspect.
8-20-73	Filed Govts affdvt & notice of motion for rehearing.
8-20-73	Filed Govts memorandum of law.
9-6-73	Filed Govts. Bill of Particulars w/requests of Defts. Turi and Badalamente.
9-11-73	ALL DEFENDANTS - Filed Govermenrs supplemental bill of particulars.
9-12-73	Hearing held - trial date set for Jan. 2, 1974 -- Carter, J.
9-28-73	All defendants - Filed Governments notice of motion for a re-hearing re disclosure
9-28-73	All defendants - Filed Governments affdvt. in support of above motion for a re-hearing.
9-28-73	All defendants - Filed Governments memorandum in support of Governments application to re-consider.
Nov. 7-73	LINDER-- Filed govts. bill of particulars.
Nov. 12-73	TURI--(atty. present)--deft. withdraws his plea of not guilty and pleads GUILTY to Count 1 only. PSI ordered. Sentence adj. to Jan. 15, 1974 at 9:30am. Bail contd. \$10,000. PRB Carter, J.
11-20-73	Filed transcript of record of proceedings, dated Sept 12, 1973
Jan. 2-74	JAMES FEENEY - Filed notice of appearance by Landas Rosen & Miller, Esqs. 110 E. 59th Street, NYC 10022 (Michael Miller of counsel) 832-0500
Jan. 2-74	Filed transcript of record of proceedings, dated 1-12-73
Jan. 30-74	Filed for Govt. Motion to adjourn trial date.
Feb. 15-74	Filed for Deft. BADALAMENTE - Order -- Ordered that the records of Herbert Olsberg be produced in U.S.D.C. for S.D.N.Y. and it is further ordered that such records be produced prior to the trial of the above matter - Carter, J.(m/n)
Mar. 8-74	JAMES FEENEY - Leave to file the within Nolle Prosequi is granted - Carter, J.
Feb. 28-74	ARTHUR BERARDELLI (atty present) withdraws his plea of Not Guilty and PLEADS GUILTY to count 1 only. Pre-sentence report ordered. Sentence adj. to April 9-1974 at 9:30 A.M. in Room 519. Bail continued \$10,000 P.R.B.Carter.J.

DATE	PROCEEDINGS
Mar.4-74	JERRY ALLEN (atty present) withdraws his plea of Not Guilty and PLEADS GUILTY to count 1 only. Pre-Sentence report ordered. Sentence adjourned without date. Bail continued \$15,000 P.R.B. - Carter, J.
Mar.4-74	Jury Trial begun as to defts. SALVATORE THOMAS BADALAMENTE, LOUIS STERN AND HERBERT YAGID (attys. present) Governments motion to dismiss count 2 as to deft. BADALAMENTE GRANTED
Mar.5-74	Trial continued
Mar.6-74	Trial continued Government rests
Mar.7-74	Trial continued Deft. Badalamente Rests- Deft's Stern & Yagid Rests.
Mar.8-74	Trial concluded - Jury Verdict as to Deft. BADALAMENTE GUILTY ON COUNT 1 STERN GUILTY ON COUNTS 1 & 2 YAGID GUILTY ON COUNTS 1 & 2 P.S.R. ordered. Sentence adjourned to April 11, 1974 at 9:30 A.M. in room 519. Bail continued as to all defts. - CARTER, J.
3-12-74	Filed Government's proposed Examination of Prospective Jurors. Filed Judgment(atty.present)
4-11-74	HERBERT YAGID - It is adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of TWO (2) YEARS, on count 1 and TWO (2) YEARS To run consecutively on count 2. Bail Pending Appeal is granted and fixed in the amount of \$10,000 Personal Recognizance Bond unsecured. Bail limits are to cover the states of New York and New Jersey. CARTER (copies issued)
4-11-74	LOUIS STERN - Filed JUDGMENT(atty present) It is adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of FIVE(5)YEARS, execution of sentence is suspended and the defendant is placed On probation for a period of FIVE(5)YEARS, subject to the standing probation order of this Court, pursuant to Title 18, United States Code Section 3651. Special condition of probation being that the defendant reside at a Community Treatment Center.--CARTER,J. (copies issued)
4-11-74	SALVATORE THOMAS BADALAMENTE - It is adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment of ONE(1)YEAR. Bail Pending Appeal is granted and fixed in the amount of \$10,000. Personal Recognizance Bond unsecured. Bail limits are to cover the states of New York and New Jersey - CARTER,J (copies issued)
Apr-11-74	SALVATORE THOMAS BADALAMENTE- Filed defendants notice of appeal to the USCA for the 2nd Circuit from final judgment entered on 4-11-74 -- mailed copies to US Atty. and deft. address 244 Mc Elroy Ave., Fort Lee, N.J.
4-16-74	ARTHUR BERARDELLI - Filed JUDGMENT(atty. present) It is adjudged that the Imposition of is suspended, and the defendant is hereby placed on probation for a period of THREE (3) YEARS, subject to the standing probation order of this Court. Probation to begin following sentence imposed by Judge Motley. On deft's counsel's motion count 2 is dismissed with the consent of the Government. - CARTER,J. (copies issued)

DATE	PROCEEDINGS
4-16-74	LEONARD TURI - FILED JUDGMENT (atty. present) It is adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of TWO(2)YEARS Execution of sentence is suspended, and the defendant is placed on probation for a period of TWO(2) YEARS, subject to the standing probation order of the Court. On defendant's counsel's motion count 2 is dismissed with the consent of the Government. CARTER, J. (copies issued)
4-16-74	BERADELLI & TURI - Confidential & Sealed Envelope not to be opened except on order of the undersigned - So ordered - CARTER, J.
4-18-74	HERBERT YAGID - Filed Notice of Appeal to U.S.C.A. from the judgments of conviction dtd 4/11/74 (m/n)
4-23-74	HERBERT YAGID - Filed Notice of Motion and Order and Affidavits, returnable 4/24/74 at 12:30 P.M. Rm. 506, for an order granting permission for atty. of record to withdraw from the case relative to the transmission of the record on appeal and ordering the assigning of this matter to the Appeals Division of Legal Aid.
4-24-74	HERBERT YAGID - Filed ORDER re: Notice of Motion dtd 4/23/74 -- Ordered that atty. of record Paul P. Rao, Jr. is hereby permitted to withdraw from the processing of the appeal, and it further ordered - that the deft. case be assigned to the Appeals Division of Legal Aid subject to their approval. PIERCE, J. (m/n)
4-30-74	Filed Letter from USDC for the Dist. of N.J. dated Feb. 1.74 to the Clerk of SD of NY. enclosed with Magistrate J.D. Schwitzer paper Re:Herbert Yagid.
4-30-74	Filed transcript of proceedings dated Mar. 4,5,6,7,8, 1974
4-30-74	Filed transcript of proceedings dated Apr. 10, 1974 at 1:30PM
4-30-74	Filed transcript of proceedings dated Apr. 11, 1974 9:30AM



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
UNITED STATES OF AMERICA : :

- v - : : INDICTMENT

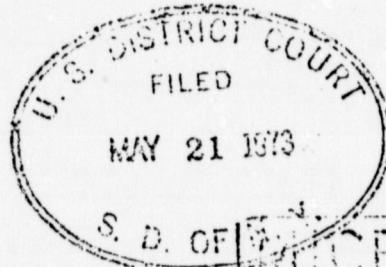
JERRY ALLEN, SALVATORE THOMAS : 73 Cr.

BADALAMENTE, ARTHUR BERARDELLI,  
JAMES FEENEY, LOUIS STERN a/k/a:  
LOUIS RUSH, LEONARD TURI and  
HERBERT YAGID,

Defendants : :

-----x

COUNT ONE



The Grand Jury charges:

1. From on or about January 1, 1973, up to and including the date of the filing of this indictment, in the Southern District of New York and elsewhere, JERRY ALLEN, SALVATORE THOMAS BADALAMENTE, ARTHUR BERARDELLI, JAMES FEENEY, LOUIS STERN a/k/a LOUIS RUSH, LEONARD TURI and HERBERT YAGID, the defendants, [unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other and with other persons to the Grand Jury known and unknown to commit certain offenses against the United States,] to wit, [to violate Title 18, United States Code, Section 2314.]

2. [It was part of said conspiracy that the defendants, with fraudulent intent, would] unlawfully, wilfully, and knowingly transport and cause to be transported in interstate and foreign commerce, falsely made, forged, altered and counterfeited securities,] to wit, passbooks and certificates of deposit from Bank of America, Los Angeles, California, from Home Savings and Loan Association in Los Angeles, California and from American Savings Association in Dallas, Texas, knowing the same to have been falsely made, forged, altered and counterfeited.

3. Among the means whereby said defendants agreed to carry out the conspiracy were the following:

(a) The defendants JERRY ALLEN, ARTHUR BERARDELLI, JAMES FEENEY, LOUIS STERN a/k/a LOUIS RUSH and HERBERT YAGID would make arrangements to secure a falsely made, forged, altered and counterfeited passbook of either Home Savings and Loan Association, Los Angeles, California or Bank of America, Los Angeles, California for use thereafter as collateral for a loan from a Swiss bank.

(b) The defendant HERBERT YAGID would travel from New York, New York to Los Angeles, California for the purpose of securing a falsely made, forged, altered and counterfeited passbook of either Home Savings and Loan Association, Los Angeles, California or Bank of America, Los Angeles, California.

(c) The defendants JERRY ALLEN, ARTHUR BERARDELLI, JAMES FEENEY, LOUIS STERN a/k/a LOUIS RUSH, LEONARD TURI and HERBERT YAGID would make arrangements to secure a falsely made, forged, altered and counterfeited passbook of American Savings Association, Dallas, Texas for use thereafter as collateral for a loan from a Swiss bank.

(d) The defendant HERBERT YAGID would travel from New York, New York to Chicago, Illinois to secure a falsely made, forged, altered and counterfeited passbook of American Savings Association, Dallas, Texas.

(e) The defendant LEONARD TURI would travel from Chicago, Illinois to Newark, New Jersey to deliver a falsely made, forged, altered and counterfeited passbook of American Savings Association, Dallas, Texas.

(f) The defendants JERRY ALLEN, SALVATORE THOMAS BADALAMENTE, ARTHUR BERARDELLI, JAMES FEENEY, LOUIS STERN a/k/a LOUIS RUSH, LEONARD TURI and HERBERT YAGID would arrange to share in the illegal proceeds obtained through the loan to be secured by the falsely made, forged, altered and counterfeited passbook.

OVERT ACTS

In furtherance of the conspiracy and to effect the objects thereof, the defendants, in the Southern District of New York and elsewhere, committed and caused to be committed the following overt acts, among others:

1. On or about March 20, 1973, the defendant HERBERT YAGID attended a meeting at Apartment 23-G, 300 East 74th Street, New York, New York.
2. On or about March 20, 1973, the defendants ARTHUR BERARDELLI, LOUIS STERN a/k/a LOUIS RUSH and HERBERT YAGID attended a meeting at the Luxor Baths Hotel, 121 West 46th Street, New York, New York.
3. On or about March 21, 1973, the defendants JERRY ALLEN, LOUIS STERN a/k/a LOUIS RUSH and HERBERT YAGID attended a meeting at the Luxor Baths Hotel, 121 West 46th Street, New York, New York.

4. On or about March 22, 1973, the defendants ARTHUR BERARDELLI, LEONARD TURI and HERBERT YAGID attended a meeting at the Westbury Hotel, 69th Street and Madison Avenue, New York, New York.

5. On or about March 22, 1973, the defendants ARTHUR BERARDELLI, JAMES FEENEY and LEONARD TURI attended a meeting at the Delta Airlines Terminal, LaGuardia Airport, Queens, New York.

6. On or about March 23, 1973, the defendants SALVATORE THOMAS BADALAMENTE and HERBERT YAGID attended a meeting at Leo's Restaurant, Fort Lee, New Jersey.

7. On or about March 26, 1973, the defendants ARTHUR BERARDELLI and LOUIS STERN a/k/a LOUIS RUSH attended a meeting at the Luxor Baths Hotel, 121 West 46th Street, New York, New York.

8. On or about March 31, 1973, the defendants ARTHUR BERARDELLI and HERBERT YAGID attended a meeting at the Croydon Hotel Coffee Shop, 86th Street and Madison Avenue, New York, New York.

(Title 18, United States Code, Section 371)



COUNT TWO

The Grand Jury further charges:

In or about March or April, 1973, in the Southern District of New York and elsewhere, JERRY ALLEN, SALVATORE THOMAS BADALAMENTE, ARTHUR BERARDELLI, JAMES FEENEY, LOUIS STERN a/k/a LOUIS RUSH, LEONARD TURI and HERBERT YAGID, the defendants, with fraudulent intent, did unlawfully, wilfully and knowingly cause to be transported and transport in interstate commerce] from Chicago, Illinois to Newark, New Jersey, falsely made, forged, altered and counterfeited securities, to wit, an American Savings Association passbook and an American Savings Association Certificate of Deposit, knowing the same to have been falsely made, forged altered and counterfeited.

(Title 18, United States Code, Sections 2314 and 2)

Steve Katz  
\_\_\_\_\_  
FOREMAN

John J. Walsh  
\_\_\_\_\_  
WHITNEY NORTH SEYMOUR, JR.  
United States Attorney for the  
Southern District of New York

A TRUE COPY  
RAYMOND F. BURKHARDT, Clerk  
By B. Edwards,  
Deputy Clerk

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :

- v - :

JERRY ALLEN, SALVATORE THOMAS  
BADALAMENTE, ARTHUR BERARDELLI, :  
LOUIS STERN a/k/a LOUIS RUSH, :  
LEONARD TURI and HERBERT YAGID, :  
:

INDICTMENT

73 Cr. 471

Defendants. :  
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COUNT ONE

The Grand Jury charges:

1. From on or about January 1, 1973, up to and including the date of the filing of this indictment, in the Southern District of New York and elsewhere, JERRY ALLEN, SALVATORE THOMAS BADALAMENTE, ARTHUR BERARDELLI, LOUIS STERN a/k/a LOUIS RUSH, LEONARD TURI and HERBERT YAGID, the defendants, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other and with other persons to the Grand Jury known and unknown to commit certain offenses against the United States, to wit, to violate Title 18, United States Code, Section 2314.

2. It was part of said conspiracy that the defendants, with fraudulent intent, would unlawfully, wilfully and knowingly transport and cause to be transported in interstate and foreign commerce, falsely made, forged, altered and counterfeited securities, to wit, passbooks and certificates of deposit from Bank of America, Los Angeles, California, from Home Savings and Loan Association in Los Angeles, California and from American Savings Association in Dallas, Texas, knowing the same to have been falsely made, forged, altered and counterfeited.

3. Among the means whereby said defendants agreed to carry out the conspiracy were the following:

(a) The defendants JERRY ALLEN, ARTHUR BERARDELLI, LOUIS STERN a/k/a LOUIS RUSH and HERBERT YAGID would make arrangements to secure a falsely made, forged, altered and counterfeited passbook of either Home Savings and Loan Association, Los Angeles, California or Bank of America, Los Angeles, California for use thereafter as collateral for a loan from a Swiss bank.

(b) The defendant HERBERT YAGID would travel from New York, New York to Los Angeles, California for the purpose of securing a falsely made, forged, altered and counterfeited passbook of either Home Savings and Loan Association, Los Angeles, California or Bank of America, Los Angeles, California.

(c) The defendants JERRY ALLEN, ARTHUR BERARDELLI, LOUIS STERN a/k/a LOUIS RUSH, LEONARD TURI and HERBERT YAGID would make arrangements to secure a falsely made, forged, altered and counterfeited passbook of American Savings Association, Dallas, Texas for use thereafter as collateral for a loan from a Swiss bank.

(d) The defendant HERBERT YAGID would travel from New York, New York to Chicago, Illinois to secure a falsely made, forged, altered and counterfeited passbook of American Savings Association, Dallas, Texas.

(e) The defendant LEONARD TURI would travel from Chicago, Illinois to Newark, New Jersey to deliver a falsely made, forged, altered or counterfeited passbook of American Savings Association, Dallas, Texas.

(f) The defendants JERRY ALLEN, SALVATORE THOMAS BADALAMENTE, ARTHUR BERARDELLI, LOUIS STERN a/k/a LOUIS RUSH, LEONARD TURI and HERBERT YAGID would arrange to share in the illegal proceeds obtained through the loan to be secured by the falsely made, forged, altered or counterfeited passbook.

OVERT ACTS

In furtherance of the conspiracy and to effect the objects thereof, the defendants, in the Southern District of New York and elsewhere, committed and caused to be committed the following overt acts, among others:

1. On or about March 20, 1973, the defendant HERBERT YAGID attended a meeting at Apartment 23-G, 300 East 74th Street, New York, New York.
2. On or about March 20, 1973, the defendants ARTHUR BERARDELLI, LOUIS STERN a/k/a LOUIS RUSH and HERBERT YAGID attended a meeting at the Luxor Baths Hotel, 121 West 46th Street, New York, New York.
3. On or about March 21, 1973, the defendants JERRY ALLEN, LOUIS STERN a/k/a LOUIS RUSH and HERBERT YAGID attended a meeting at the Luxor Baths Hotel, 121 West 46th Street, New York, New York.
4. On or about March 22, 1973, the defendants ARTHUR BERARDELLI, LEONARD TURI and HERBERT YAGID attended a meeting at the Westbury Hotel, 69th Street and Madison Avenue, New York, New York.

5. On or about March 22, 1973, the defendants ARTHUR BERARDELLI and LEONARD TURI attended a meeting at the Delta Airlines Terminal, LaGuardia Airport, Queens, New York.

6. On or about March 23, 1973, the defendants SALVATORE THOMAS BADALAMENTE and HERBERT YAGID attended a meeting at Leo's Restaurant, Fort Lee, New Jersey.

7. On or about March 26, 1973, the defendants ARTHUR BERARDELLI and LOUIS STERN a/k/a LOUIS RUSH attended a meeting at the Luxor Baths Hotel, 121 West 46th Street, New York, New York.

8. On or about March 31, 1973, the defendants ARTHUR BERARDELLI and HERBERT YAGID attended a meeting at the Croydon Hotel Coffee Shop, 86th Street and Madison Avenue, New York, New York.

(Title 18, United States Code, Section 371)

COUNT TWO

The Grand Jury further charges:

In or about March or April, 1973, in the Southern District of New York and elsewhere, JERRY ALLEN, ARTHUR BERARDELLI, LOUIS STERN a/k/a LOUIS RUSH, LEONARD TURI and HERBERT YAGID, the defendants, with fraudulent intent, did unlawfully, wilfully and knowingly cause to be transported and transport in interstate commerce from Chicago, Illinois to Newark, New Jersey, falsely made, forged, altered or counterfeited securities, to wit, an American Savings Association passbook and an American Savings Association Certificate of Deposit, knowing the same to have been falsely made, forged, altered or counterfeited.

(Title 18, United States Code, Sections 2314 and 2)

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FOREMAN

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PAUL J. CURRAN  
United States Attorney for the  
Southern District of New York.

2 CHARGE TO THE JURY

3 Hon. Robert L. Carter

4 Each of you ladies and gentlemen has before you a  
5 copy of the charge that I am about to read. You will not be  
6 able to take it into the jury room with you. My purpose in  
7 furnishing it to you is the hope and expectation that by  
8 being able to absorb it with two of your senses, that is,  
9 hearing it and looking at it, that you will be more fully  
10 able to understand the charge.

11 I will have to, from time to time, go off the charge  
12 but I think it will be indicated when I do on the written charge.

13 We now come to that part of the case where the  
14 evidence is in, the lawyers have presented their arguments and  
15 you are about to exercise your final role which is to pass upon  
16 and decide the fact issues that are in the case. You are the  
17 sole and exclusive judge of the facts. You pass upon the  
18 weight of the evidence. You determine the credibility of  
19 witnesses. You resolve such conflicts as there may be in the  
20 evidence and you draw such reasonable inferences as may be  
21 warranted by the testimony or exhibits in the case.

22 My function at this point is to instruct you as to  
23 the law that is applicable to the case. It is your duty to  
24 accept the law as I state it to you in these instructions and  
25 to apply it to the facts as you find them. The logical result

1 48kgs

589

2 of that application is the verdict in the case.

3 With respect to any fact matter, it is your recol-  
4 lection and yours alone that governs. Anything that counsel,  
5 either for the Government or for the defense, may have said  
6 with respect to matters in evidence during the trial, in a  
7 question, in a colloquy with the Court, in argument or in  
8 summation, is not to be substituted for your own recollection  
9 of the evidence.

10 So, too, anything the Court may have said during  
11 the trial, or may refer to during the course of these instruc-  
12 tions as to any factual matter in evidence is not to be taken  
13 in lieu of your own recollection. The case must be decided  
14 by you upon the sworn testimony of the witnesses, and such  
15 exhibits as were received in evidence.

16 At times throughout this trial, I have been called  
17 upon to make rulings on various matters of law, such as when  
18 a question put to a witness was objected to, and after a  
19 question was answered a motion was made to strike the answer.  
20 I have sustained some objections and I have overruled others.  
21 I have struck out answers and rejected exhibits that were  
22 offered. It is essential in the performance of your duty that  
23 when anything was ordered stricken from the record or rejected  
24 you put it out of your mind and disregard it. Similarly, if  
25 a question was asked and an objection to that question

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2 was sustained and no answer was given, the question itself  
3 should play no part in your consideration of the case. Please  
4 do not concern yourselves at all with my reasons for any of  
5 these rulings. These are purely legal matters.

Conferences at the bench were conducted at the  
request of the attorneys. As I have advised you, these  
conferences were solely on questions of law and are of no  
concern to you. You are not to draw any inferences against  
either side because of requests for such conferences, and I  
might add, nor are you to draw any inferences because I have  
denied from time to time holding conferences that were requested.

I have permitted each of you to take notes during the course of this trial. I expect you to use whatever notes you took merely as memory aids. They should not be allowed to take precedence over your independent memory of the facts. Moreover, merely because a fellow juror may have memorialized in his or her notes something contrary to your recollection is not to be taken by you to mean that your memory is in error. It is your own recollection of the facts and yours alone which is controlling.

23           In deciding this case, you will be called upon to  
24        consider both direct evidence and circumstantial evidence. It  
25        is well to explain now the difference between these two types  
          of evidence.

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2                Direct evidence is where a witness or a participant  
3       testified as to what he saw, heard or observed, what he knows  
4       of his own knowledge, something which comes to him by virtue  
5       of his senses. A document can also contain direct evidence.

6                Circumstantial evidence is evidence of facts and  
7       circumstances from which one may infer connected facts which  
8       reasonably flow in the common experience of mankind. Stated  
9       somewhat differently, circumstantial evidence is that evi-  
10       dence which tends to prove a disputed fact by proof of other  
11       facts which have a logical tendency to lead the mind to a  
12       conclusion that those facts exist which are sought to be  
13       established.

14               The circumstantial facts or facts upon which it is  
15       sought to base a disputed fact must be shown and not left to  
16       rest on conjecture, and when shown, in order to use it to  
17       prove a disputed fact therefrom, it must appear that the  
18       disputed fact in question is the only one that can follow from  
19       the circumstantial fact, that any other explanation is fairly  
20       and reasonably excluded.

21               Let me give you a practical illustration of what  
22       that means. I think it is raining outside now as I look out  
23       of the window, and assuming it is raining, all of us could  
24       say that it is raining. We see it, we feel it, we know it is  
25       there, if we were outside. Suppose we came in here this

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2 morning when it wasn't raining and the blinds were drawn and  
3 in the course of these deliberations we begin to see people  
4 come into this courtroom with umbrellas, with raincoats, and  
5 they are wet. Then we will conclude that it is raining out-  
6 side although we can't see it, and this is the difference and  
7 the meaning of circumstantial evidence.

8 Circumstantial evidence, if believed, is of no less  
9 value than direct evidence for in any case you must be con-  
10 vinced beyond a reasonable doubt of the guilt of a defendant.

11 There are times when different inferences may be  
12 drawn from facts, whether they are proved by direct or circum-  
13 stantial evidence. The Government asks you to draw one set  
14 of inferences while the defendants ask you to draw another.  
15 It is for you to decide and for you alone which inferences you  
16 will draw.

17 It is your function to determine the truth or falsity  
18 of the testimony of each witness. No inference as to the  
19 credibility of any witness should be drawn from the fact that  
20 upon occasion I have asked questions of a witness. My questions  
21 were only intended for clarification or to expedite matters.  
22 They were not intended to suggest any opinion as to the  
23 credibility of a witness who appeared before you.

24 Now, how do you determine the truth and how do you  
25 appraise the credibility of a witness? Well, as I told you

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2 before, simply put, you use your plain, everyday common sense.

3                  In weighing the testimony of the witnesses, you can  
4 consider their relationship to the Government or to a defendant,  
5 as the case may be, and any bias or interest in the outcome  
6 of the case, his or her manner while testifying, what was  
7 the witness' candor, whether he or she equivocated, whether  
8 was direct or indirect in some testimony, whether he was frank  
9 and straightforward, open or deliberately confusing, truthful  
10 or evasive, the extent to which he has been corroborated or  
11 contradicted by other credible evidence or whether there were  
12 inconsistencies within the witness' testimony, his criminal  
13 record, if any, and whether he changed his testimony.

14                  An interested witness is not necessarily unworthy of  
15 belief. It is a factor, however, which you may consider in  
16 determining the weight and credibility to be given to that  
17 witness' testimony.

18                  If you find that any witness has wilfully testified  
19 falsely to any fact, you may disregard all his testimony or  
20 accept such part of it as you believe worthy of belief as it  
21 appeals to your reason or judgment.

22                  A witness may be discredited by contradictory  
23 evidence or by evidence that at other times the witness has  
24 made statements which are inconsistent with his or her testimony  
25 here. If you believe that any witness has been discredit-

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2 in this manner, you may give the testimony of that witness  
3 whatever credibility, if any, you think it deserves.

4 The weight of the evidence is not necessarily  
5 determined by the number of witnesses testifying on either  
6 side. You should consider all the facts and circumstances  
7 in evidence to determine which of the witnesses are worthy of  
8 greater credence. You may find that the testimony of a  
9 smaller number of witnesses on one side is more credible than  
10 the testimony of a greater number of witnesses on the other  
11 side.

12 The Government is entitled under the law to use  
13 various investigative methods, including the use of recording  
14 equipment. I instruct you that as a matter of law, the use  
15 of electronic equipment in this case was proper, lawful, and  
16 did not violate the defendants' rights. The fact that such  
17 investigative techniques were used, therefore, should not in  
18 any way concern you or affect your consideration of the issues  
19 before you.

20 The fact that the Government is a party here, that  
21 the prosecution is brought in the name of the United States of  
22 America, entitles it to no greater consideration than that  
23 accorded to any other party to the litigation. By the same  
24 token, it is entitled to no less consideration. All the  
25 parties, Government and individuals alike, stand equal before

1 54kgs

2 this court of justice.

3 As I advised you at the start of this trial, the  
4 indictment is merely an accusation, a charge. It is not  
5 evidence or proof of a defendant's guilt and no inference of  
6 any kind may be drawn from the indictment.

7 The Government has the burden of proving the  
8 charges against each defendant beyond a reasonable doubt. It  
9 is a burden that never shifts, and remains upon the Govern-  
10 ment throughout the entire trial. A defendant does not have  
11 to prove his innocence. On the contrary, he is presumed to  
12 be innocent of the accusation contained in the indictment.

13 The presumption of innocence was in his favor at  
14 the start of the trial, continued in his favor throughout  
15 the trial, is in his favor even as I instruct you now. It  
16 remains in his favor during the course of your deliberations  
17 in the jury room. It is removed only if and when you are  
18 satisfied that the Government has sustained its burden of  
19 proving the guilt of a defendant beyond a reasonable doubt.

20 Now, what is a reasonable doubt? It is a doubt  
21 based on reason, which arises from the evidence or lack of  
22 evidence in the case. It is a doubt that a reasonable man or  
23 woman might entertain. It is not a fanciful or speculative  
24 doubt. It is not an imagined doubt, it is not a doubt that  
25 a juror might conjure up in order to avoid performing an

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2 unpleasant task or duty. It is not proof to an absolute  
3 certainty.

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4 Let me repeat: it is a reasonable doubt. It is a  
5 doubt that appeals to your reason, to your judgment, to your  
6 common understanding and your common sense, a doubt that will  
7 cause you to hesitate to act in matters of importance in your  
8 daily lives.

9 On the other hand, the Government does not have to  
10 prove the guilt of the defendants beyond all possible doubt.  
11 If when you consider the evidence in this case, you have a  
12 reasonable doubt that the Government has proved any element of  
13 the crime charged, then you must return a verdict of acquittal.

14 You may not return a guilty verdict simply because  
15 you feel that it is more likely than not that the defendant  
16 committed the crime charged. A guilty verdict is only appro-  
17 priate if each and every one of you is satisfied that the  
18 defendant's guilt has been proved beyond all reasonable doubt.

19 There has been testimony by Mr. Olsberg, an indivi-  
20 dual commonly known as an informant or informer. The law  
21 permits the use of informers, provided the rights of a  
22 defendant are not violated and, therefore, whether or not you  
23 approve of the use of informers should not enter into your  
24 deliberations.

25

You are required, however, to consider the

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2 credibility of this witness and to do this you must use the  
3 guidelines which I gave you earlier.

4 The fact that a person has been convicted of a  
5 serious crime, especially one bearing on his veracity, may be  
6 considered by you as bearing on his credibility as a witness  
7 in this case.

8 You may consider whether Mr. Olsberg's testimony was  
9 a fabrication, inspired by his own motives or self-interest  
10 or personal advantage or induced by a promise or a hope or an  
11 expectation of favorable consideration by the Government in  
12 connection with these or other matters. You should also  
13 consider whether Olsberg's testimony was motivated by any  
14 hostility towards the defendants.

15 Once again, I must remind you that merely because  
16 Olsberg may have been previously convicted or had an interest  
17 in this case or was hostile to a defendant does not mean his  
18 testimony was not truthful and candid. Those factors indicate  
19 that you should view his testimony with caution, but you  
20 must determine the weight to be given to his testimony based  
21 on whether or not, and to what extent, he is to be believed.

22 The Government also called as a witness Jerry Allen,  
23 who, if his testimony is to be accepted, was an accomplice in  
24 the crimes charged against the defendants in this case.

25 In the prosecution of crime, the Government is

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2 frequently called upon to use witnesses who are accomplices.  
3 Often it has no choice. The Government must rely upon wit-  
4 nesses or transactions such as they are.

5 The fact that Allen has been convicted of a serious  
6 crime, especially one bearing on his veracity, may be  
7 considered by you as bearing on his credibility as a witness  
8 in this case.

9 There is no requirement in the federal courts that  
10 the testimony of an accomplice be corroborated. The Govern-  
11 ment contends that Jerry Allen's testimony is corroborated by  
12 other evidence with respect to several key portions of his  
13 testimony. However, even without such corroboration, conviction  
14 may rest upon the testimony of an accomplice, if you believe  
15 it and find it credible. It does not follow that because a  
16 person has acknowledged participation in the crimes charged  
17 against the defendant that he is incapable of giving a true  
18 version of what he testified to in the case on trial.

19 His testimony, however, should be viewed with  
20 caution and scrutinized with care. The fact that a witness is  
21 an accomplice may be considered by you as bearing on his  
22 credibility. Was his testimony inspired by any motive of  
23 reward, of self-interest, or hostility to the defendants so  
24 that he gave false or colored testimony against them in this  
25 court before you? If you find that it was, you ought,

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2 unhesitatingly, to reject it.

3                 However, after a cautious and careful examination  
4 of the accomplice's testimony and his demeanor upon the  
5 witness stand, if you are satisfied that he told the truth  
6 here as to certain events, there is no reason why you should  
7 not accept it as credible and act upon it accordingly.  
8

9                 Let me now turn to the indictment in this case.

10                 Stated briefly, the first count charges that Defendants  
11 Badalamente, Stern and Yagid conspired with each other and  
12 with four other named individuals to transport in interstate  
13 or foreign commerce falsely made, forged, altered and counter-  
14 feited passbooks and certificates of deposit. The second  
15 count charges that Defendants Stern and Yagid actually caused  
16 to be transported in interstate commerce a falsely made,  
17 forged, altered and counterfeited passbook and certificate of  
deposit.

18                 It is your obligation to consider separately each  
19 of the individual charges or counts of the indictment and to  
20 decide whether as to each count, the Government has or has not  
21 sustained its burden of proving beyond a reasonable doubt the  
22 guilt of each defendant named in that particular count.  
23

24                 Let me read the indictment:

25                 Count 1: The grand jury charges that from on or  
about January 1, 1973 up to and including the date of filing

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2 of this indictment in the Southern District of New York and  
3 elsewhere, Jerry Allen, Salvatore Thomas Badalamente, Arthur  
4 Berardelli, Louis Stern also known as Louis Rush, Leonard  
5 Turi and Herbert Yagid, the defendants, unlawfully, wilfully  
6 and knowingly did combine, conspire, confederate and agree  
7 together and with each other and with other persons to the  
8 grand jury known and unknown, to commit certain offenses  
9 against the United States, to wit, to violate Title 18, United  
10 States Code, Section 2314.

11           2: It was part of said conspiracy that the defen-  
12 dants with fraudulent intent would unlawfully, wilfully and  
13 knowingly transport and cause to be transported in interstate  
14 and foreign commerce, falsely made, forged, altered and counter-  
15 feited securities, to wit, passbooks and certificates of  
16 deposit from the Bank of America, Los Angeles, California, the  
17 Home Savings and Loan Association in Los Angeles, California,  
18 and from American Savings Association in Dallas, Texas, knowing  
19 the same to be falsely made, false, forged, altered and  
20 counterfeited.

21           2: Among the means whereby said defendants agreed  
22 to carry out the conspiracy were the following: A) Defendants  
23 Jerry Allen, Arthur Berardelli, Louis Stern also known as  
24 Louis Rush, and Herbert Yagid, would make arrangements to  
25 secure a falsely made, forged, altered and counterfeited

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2 passbook of either Homes Savings and Loan Associates, Los  
3 Angeles, California or Bank of America, Los Angeles, California  
4 for use thereafter as a collateral for a loan from a Swiss  
5 bank.

6 B: The defendant Herbert Yagid would travel from  
7 New York, New York, to Los Angeles, California for the purpose  
8 of securing a falsely made, false, forged and altered,counter-  
9 feited passbook of either Home Savings and Loan Association,  
10 Los Angeles, California or Bank of America, Los Angeles,  
11 California.

12 C: The defendants Jerry Allen, Arthur Berardelli,  
13 Louis Stern also known as Louis Rush, Leonard Turi and Herbert  
14 Yagid would make arrangements to secure a falsely made,  
15 forged, altered and counterfeited passbook of American Savings  
16 Association, Dallas, Texas, for use thereafter as collateral  
17 for a loan on a Swiss bank.

18 D: The defendant Herbert Yagid would travel from  
19 New York, New York to Chicago, Illinois, to secure a falsely  
20 made, forged, altered and counterfeited passbook of American  
21 Savings Association, Dallas Texas.

22 E: The defendant Leonard Turi would travel from  
23 Chicago, Illinois to Newark, New Jersey to deliver a falsely  
24 made, forged, altered and counterfeited passbook of American  
25 Savings Association of Dallas, Texas.

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2 F: The defendants Jerry Allen, Salvatore Thomas  
3 Badalamente, Arthur Berardelli, Louis Stern also known as  
4 Louis Rush, Leonard Turi and Herbert Yagid would arrange to  
5 share in the illegal proceeds obtained through the loan to  
6 be secured by the falsely made, forged, altered and counter-  
7 feited passbook.

8 In furtherance of the conspiracy and to effect the  
9 objects thereof, the defendants in the Southern District of  
10 New York and elsewhere committed and caused to be committed  
11 certain overt acts, which I shall read to you in a few  
12 minutes. But first I shall instruct you on the law applicable  
13 to Count 1:

14 The conspiracy statute is Section 371 of Title 18  
15 of the United States code. It provides:

16 If two or more persons conspire either to commit any  
17 offense against the United States or to defraud the United  
18 States or any agency thereof in any manner or for any purpose  
19 and one or more of such persons do any act to effect the object  
20 of the conspiracy, then they are guilty of conspiracy.

21 In this case it is charged that the object of the  
22 conspiracy was a violation of Section 2314 of Title 18, which  
23 reads in pertinent part:

24 Whoever with unlawful or fraudulent intent transports  
25 in interstate or foreign commerce any falsely made, forged,

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2 altered or counterfeited securities, knowing the same to have  
3 been falsely made, forged, altered or counterfeited, is guilty  
4 of committing a crime.

5 In order to find a defendant guilty of the conspiracy  
6 charged in the first count of the indictment, you must find  
7 beyond a reasonable doubt:

8 First, that sometime between January 1, 1973 and  
9 the date of the filing of the indictment, which was May 21,  
10 1973, an agreement existed between each defendant on trial and  
11 any other person, whether on trial or not; that it was part  
12 of this agreement to do the following:

13 A: To make arrangements to secure a falsely made,  
14 forged, altered or counterfeited passbook and certificate of  
15 deposit from the Bank of America or Home Savings and Loan  
16 Association or American Savings Association for use thereafter  
17 as collateral for a loan from a Swiss bank.

18 B: To transport or cause to be transported in inter-  
19 state or foreign commerce a falsely made, forged, altered and  
20 counterfeited passbook and certificate of deposit from the  
21 Bank of America or Home Savings and Loan Association or  
22 American Savings Association, knowing that said passbook and  
23 certificate of deposit would be falsely made, forged, altered  
24 or counterfeited.

25 C: To make arrangements to share in the illegal

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2       proceeds obtained through the loan to be secured by the  
3       falsely made, forged, altered and counterfeited passbook.

4              Second, that the defendant whose guilt or innocence  
5       you are considering knowingly and wilfully became a partici-  
6       pant in the conspiracy with knowledge of its alleged criminal  
7       purpose.

8              Third, that at least one of the alleged conspirators,  
9       not necessarily the defendant you are considering, knowingly  
10       committed at least one of the overt acts set forth in the  
11       indictment at or about the time and place alleged.

12             If the Government fails to establish each of these  
13       three elements beyond a reasonable doubt, you must acquit the  
14       defendant as to Count 1. If the Government succeeds in  
15       satisfying this burden of proof, you must convict.

16             As I have informed you, the first of the elements  
17       which you must find that the Government has proved beyond a  
18       reasonable doubt is that the conspiracy charged in the indict-  
19       ment existed. First I want to discuss with you what the term  
20       "conspiracy" means, because that term is here used in a legal  
21       context and therefore has a somewhat different meaning than it  
22       has when it is used colloquially.

23             What is a conspiracy? A conspiracy is a combination  
24       or agreement of two or more persons to accomplish a criminal or  
25       unlawful purpose. The gist of the crime of conspiracy is the

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2 unlawful combination or agreement to violate the law. Whether  
3 or not the defendants finally accomplished what it is alleged  
4 they conspired to do is immaterial. That is to say, the  
5 Government is not obliged to prove that a purpose of the  
6 conspirators was attained.

7 It has often been said that a conspiracy is a  
8 partnership in crime in which each members becomes the agent  
9 of every other member. To establish a conspiracy, however,  
10 the Government is not required to show that the alleged  
11 conspirators sat around a table and entered into a solemn  
12 compact, orally or in writing, stating that they have formed  
13 a conspiracy to violate the law and setting forth details of  
14 the plans. It is sufficient if two or more persons in any  
15 manner through any contrivance, impliedly or tacitly, come  
16 to a common understanding to violate the law. Express  
17 language or specific words are not required to indicate assent  
18 or attachment to a conspiracy. On the other hand, mere  
19 similarity of conduct among various persons, and the fact  
20 that they may have associated with each other and may have  
21 assembled together and discussed common aims and interests  
22 does not necessarily establish the proof of the existence  
23 of a conspiracy.

24 If upon consideration of all the evidence, direct  
25 and circumstantial, testimonial and documentary, you find

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2       beyond a reasonable doubt that the minds of at least two of  
3       the alleged conspirators met in an understanding way and that  
4       they agreed as I have explained a conspiratorial agreement to  
5       you, to work together in furtherance of the unlawful scheme  
6       alleged in the indictment, then proof of the existence of the  
7       conspiracy is satisfied.

8                  Once you are satisfied that the conspiracy charged  
9       existed, you must ask yourselves who its members were. You  
10      may not assume that a defendant joined a conspiracy simply  
11      because you are convinced that he knew or was associated or  
12      had dealings with people who conspired to violate the law.  
13      Similarly, the mere fact that two persons or more are on trial  
14      together cannot be considered in any way as indicating that  
15      they participated in a conspiracy to violate the law.

16                 All of the conspirators need not be acquainted with  
17      each other. They may not have previously associated together.  
18      One of the defendants may know only one other member of the  
19      conspiracy, but if he enters into an unlawful agreement with  
20      that other member of the conspiracy, he becomes a party  
21      thereto.

22                 To conclude that a defendant was a member of a  
23      conspiracy, you must find that he knew the unlawful purpose  
24      of the alleged conspiracy, that knowing the purpose he  
25      intentionally joined in the endeavor and that he had an

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2 interest in making it succeed. It is not necessary, however  
3 that you find that each conspirator was fully informed as to  
4 the details or the full scope of the conspiracy, or partici-  
5 pated in every aspect of the conspiracy. A person becomes  
6 a member of a conspiracy by associating himself with a common  
7 plan or scheme, knowing the central aim or principal purpose  
8 of that common plan or scheme and intending to help bring  
9 about its success.

10 Knowledge, wilfullness, and intent exist in the  
11 mind. Since it is not possible to look into a man's mind  
12 to see what went on, the only way you have of arriving at  
13 a decision on these questions is for you to take into  
14 consideration all the facts and circumstances shown by the  
15 evidence, including the exhibits, and to determine from all  
16 such facts and circumstances whether the requisite knowledge,  
17 wilfullness and intent were present at the time in question.  
18 In making this determination, you should presume that a person  
19 intends the natural and probable consequences of his acts.

20 You will recall that throughout the trial, the acts  
21 and statements of one alleged co-conspirator in the absence of  
22 other alleged co-conspirators were received in evidence subject  
23 to connection, that is, only with respect to the particular  
24 person or persons making them.

25 However, if you find that a conspiracy existed, then

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2 in considering whether or not a particular defendant was a  
3 member of the conspiracy, you may rely not only on his own  
4 statement, but on the statements and declarations of the  
5 other alleged co-conspirators.

6 Moreover, if you find that a conspiracy existed,  
7 then any act or declaration made during the conspiracy and in  
8 furtherance of it by a person found by you to have been a  
9 member of the conspiracy may be considered against any defen-  
10 dant whom you find was also a member, even though such act  
11 or declaration was made in the absence and without the  
12 knowledge of that defendant.

13 Now we come to the third element you must consider  
14 as to Count 1. If you have found that the alleged conspiracy  
15 existed and that the defendant whose guilt you are considering  
16 was a member of it, then you must consider the overt act  
17 requirement.

18 The offense of conspiracy is complete when the  
19 unlawful agreement is made and any single overt act is done  
20 by one of the alleged conspirators in furtherance of the  
21 conspiracy.

22 By the term "overt act," we mean an act committed  
23 in an effort to accomplish some object or purpose of the  
24 conspiracy. The overt act in this sense need not be a crime  
25 in itself. It must, however, be an act which follows from the

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2 conspiracy and is directed towards accomplishment of the  
3 criminal purpose of the conspiracy. I will now read the overt  
4 acts charged in the indictment.

5 In furtherance of the conspiracy and to effect the  
6 objects thereof, the defendants in the Southern District of  
7 New York and elsewhere committed and caused to be committed  
8 the following overt acts, among others:

9 1) On or about March 20, 1973, the defendant  
10 Herbert Yagid attended a meeting at Apartment 23-G, 300 East  
11 74th Street, New York, New York.

12 2) On or about March 20, 1973, the defendants Arthur  
13 Berardelli, Louis Stern also known as Louis Rush, and Herbert  
14 Yagid attended a meeting at the Luxor Baths Hotel, 121 West  
15 46th Street, New York, New York.

16 3) On or about March 21, 1973, the defendants Jerry  
17 Allen, Louis Stern also known as Louis Rush, and Herbert  
18 Yagid attended a meeting at the Luxor Baths Hotel, 121 West  
19 46th Street, New York, New York.

20 4) On or about March 22, 1973, the defendants  
21 Arthur Berardelli, Leonard Turi and Herbert Yagid attended  
22 a meeting at the Westbury Hotel, 69th Street and Madison  
23 Avenue, New York, New York.

24 5) On or about March 22, 1973, the defendants  
25 Arthur Berardelli and Leonard Turi attended a meeting at the

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2 Delta Airlines Terminal, LaGuardia Airport, Queens, New York.

3 6) On or about March 23, 1973, the defendants  
4 Salvatore Thomas Badalamente and Herbert Yagid attended a  
5 meeting at Leo's Restaurant, Fort Lee, New Jersey.

6 7) On or about March 26, 1973, the defendants  
7 Arthur Berardelli and Louis Stern, also known as Louis Rush,  
8 attended a meeting at the Luxor Baths Hotel, 121 West 46th  
9 Street, New York, New York.

10 8) On or about March 31, the defendants Arthur  
11 Berardelli and Herbert Yagid attended a meeting at the Croydon  
12 Hotel coffee shop, 86th Street and Madison Avenue, New York,  
13 New York.

14 Title 18, United States Code, Section 371.

15 If you find beyond a reasonable doubt that a  
16 conspiracy existed as charged in the indictment, and that  
17 during the existence of the conspiracy at least one of the  
18 overt acts alleged was knowingly done by one or more of the  
19 conspirators in the furtherance of some object of the  
20 conspiracy, proof of the conspiracy offense is then complete.  
21 It is complete as to each defendant found by the jury beyond  
22 a reasonable doubt to have been knowingly and wilfully a  
23 member of the conspiracy at the time the overt act was  
24 committed, regardless of which of the conspirators committed  
25 the overt act.

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2            While the indictment charges in Count 1 that the  
3      conspiracy began on or about January 1, 1973 and continued  
4      to the day of its filing, May 21, 1973, it is not essential  
5      that the Government prove that the conspiracy started and  
6      ended at or about those specified dates. It is sufficient  
7      if you find that in fact a conspiracy was formed and existed  
8      for some substantial time within the period set forth in the  
9      indictment, and that at least one of the overt acts was  
10     committed in furtherance thereof in that period.

11           Count 2 of the indictment reads as follows:

12           The grand jury charges in or about March or April  
13      of 1973, in the Southern District of New York and elsewhere,  
14      Jerry Allen, Arthur Berardelli, Louis Stern, also known as  
15      Louis Rush, Leonard Turi, and Herbert Yagid, the defendants,  
16      with fraudulent intent did unlawfully, wilfully and knowingly  
17      cause to be transported and transported in interstate  
18      commerce from Chicago, Illinois to Newark, New Jersey, falsely  
19      made, forged, altered and counterfeited securities, to wit,  
20      American Savings Association passbook and American Savings  
21      Association certificate of deposit, knowing the same to have  
22      been falsely made, forged, altered and counterfeited, Title  
23      18, United States Code, Section 2314 and 2.

24           You will recall that Section 2314 of Title 18  
25      provides that whoever with unlawful or fraudulent intent

1      71kgs

612

2      transports in interstate or foreign commerce any falsely made,  
3      forged, altered or counterfeited securities, knowing the same  
4      to have been falsely made, forged, altered or counterfeited,  
5      is guilty of a crime.

6               It is not necessary for the Government to show that  
7      the defendants Stern and Yagid physically committed the crime  
8      themselves. Section 2 of Title 18 of the United States Code  
9      provides, in pertinent part, that: Whoever commits an offense  
10     against the United States or aids, abets, counsels, commands,  
11     induces or procures its commission, or whoever wilfully causes  
12     an act to be done which, if directly performed by him or  
13     another, would be an offense against the United States, is  
14     guilty of that offense.

15              Thus, a person who aids and abets another to commit  
16     an offense is just as guilty of that offense as he would be had  
17     he committed it himself.

18              Before you can conclude that a person aided and  
19     abetted, you must first find that the substantive crime charged,  
20     in this case, transporting in interstate commerce a falsely  
21     made, forged, altered and counterfeited passbook and certifi-  
22     cate of deposit, was in fact committed. Secondly, you must  
23     determine that the defendant in some way associated himself  
24     with the criminal venture, that he participated in it as  
25     something he wished to bring about, and that by his actions,

1 72kgs

613

2 he tried to make the crime succeed. You must find more than  
3 the defendant's mere presence during or knowledge of an offense

4 The Government does not contend that the defendants  
5 Stern and Yagid physically committed the crime of transporting  
6 the forged American Savings Association passbook and certifi-  
7 cate of deposit in interstate commerce. Nor does the Govern-  
8 ment contend that each defendant is necessarily an aider and  
9 abettor. What the Government contends is that the defendants  
10 Stern and Yagid are guilty of the substantive offense  
11 charged in Count 2 because it was committed in furtherance of  
12 and during the course of the unlawful conspiracy of which they  
13 were members.

14 You will recall that I told you that a conspirator  
15 is liable for the acts and statements of his co-conspirators  
16 provided they were made within the scope of the unlawful agree-  
17 ment as he saw it during the pendency of the conspiracy and  
18 in furtherance of its objectives.

19 To find Mr. Stern or Mr. Yagid guilty of the crime  
20 of transporting the forged American Savings Association pass-  
21 book and certificate of deposit in interstate commerce as  
22 charged in Count 2 of the indictment, you must find beyond a  
23 reasonable doubt:

24 First, that on or about April 2, 1973, Leonard Turi  
25 transported a forged or counterfeited American Savings

1      73kgs

614

2      Association passbook and certificate of deposit in interstate  
3      commerce.

4                 Second, that on or about April 2, 1973, a conspiracy  
5      existed to transport the forged passbooks and certificates of  
6      deposit in interstate or foreign commerce.

7                 Third, that the defendant you are considering was  
8      a member of the conspiracy to transport the forged passbook  
9      and certificate of deposit in interstate or foreign commerce.

10                Fourth, that Leonard Turi was a member of the same  
11     conspiracy to transport the forged passbook and certificate  
12     of deposit in interstate or foreign commerce.

13                Fifth, that Leonard Turi's transportation of the  
14     forged American Savings Association passbook and certificate  
15     of deposit was a crime committed in furtherance of the same  
16     conspiracy.

17                Sixth, that the American Savings Association passbook  
18     and certificate of deposit in question were falsely made,  
19     forged, altered or counterfeited by someone, not necessarily  
20     the defendants or members of the conspiracy.

21                Seventh, that the defendant you are considering knew  
22     the passbook and certificate of deposit were falsely made,  
23     forged, altered or counterfeited.

24                Eighth, that the defendant you are considering  
25     wilfully did the act or acts charged.

2 An act is done knowingly if it is done voluntarily  
3 and purposefully and not because of mistake, inadvertence  
4 or other innocent reason.

5 An act is wilfull if it is done knowingly, deliber-  
6 ately and with an evil motive or purpose. An act is not done  
7 wilfully if it is done as a result of mistake, carelessness,  
8 lack of an evil motive or purpose or for some other innocent  
9 reason.

10 It is not necessary for the Government to prove that  
11 a particular defendant actually knew that Leonard Turi was  
12 transporting the American Savings Association passbook and  
13 certificate of deposit on April 2, 1973, or that a particular  
14 defendant participated in the forgery or counterfeiting of the  
15 passbook or certificate of deposit, or that he knew the identity  
16 of the person who committed the forgery or counterfeiting.  
17

18 Defendant Stern and Yagid contend that even if you  
19 find that a conspiracy existed, and that they were members of  
20 it, Yagid withdrew formally from the conspiracy on March 31,  
21 1973 and Stern withdrew on or about April 1, 1973. A conspira-  
22 tor has the right to discontinue his participation in carrying  
23 out a conspiracy. However, in order to withdraw from a  
24 conspiracy, a defendant must take some affirmative action to  
25 disavow the purpose of the conspiracy, as for example, by  
making a clean breast to appropriate authorities, or by

1 75kgs

616

2 advising his co-conspirators that he is abandoning the project.

3 Mere cessation of activity is not enough. And the burden of  
4 establishing a withdrawal is on the defendant who asserts it.

5 Defendants Yagid and Stern contend that they with-  
6 drew from the conspiracy to transport forged passbooks in  
7 interstate commerce prior to the transportation of the American  
8 Savings Association passbook and certificate of deposit by  
9 Leonard Turi on April 2, 1973. Whether or not the conversations  
10 which Mr. Yagid reportedly had with Mr. Olsberg on March 31,  
11 1973 and April 1, 1973 constituted an effective withdrawal  
12 as to Stern or Yagid is for you to decide.

13 If you find that the defendants did not withdraw  
14 from the conspiracy, or that an attempted withdrawal was not  
15 effective in that their prior acts helped set in motion an  
16 illegal scheme which necessarily resulted in Turi's interstate  
17 transportation of a forged passbook, then you may proceed to  
18 determine whether or not they are guilty of the substantive  
19 crime charged in Count 2 in accordance with the instructions  
20 I have already given you. If you find that the defendants  
21 did effectively withdraw on or about March 31 and April 1,  
22 1973, then they were not members of the conspiracy on April  
23 2, 1973 when it is submitted that Leonard Turi transported a  
24 forged passbook, and you must therefore acquit them of the  
25 charge in Count 2.

2           Withdrawal from the conspiracy should not be  
3   considered by you as a defense to Count 1, that is, the  
4   conspiracy count, if you find that the defendant whose conduct  
5   you are considering, Yagid or Stern, committed at least one  
6   overt act in furtherance of an illegal plan prior to his  
7   alleged withdrawal. Indeed, the Government has offered proof  
8   to show that Messrs. Yagid and Stern committed several acts  
9   prior to their alleged withdrawal, which acts the Government  
10   contends were in furtherance of an illegal plan to transport  
11   forged passbooks in interstate commerce, and Defendant Yagid  
12   has admitted the commission of some such overt acts by him  
13   and Defendant Stern. As to those acts, you will recall  
14   defendants assert the defense of entrapment. Of course, if  
15   you find that the defendants committed no overt acts prior  
16   to their alleged withdrawal, and that they did in fact  
17   affirmatively and effectively withdraw, you must acquit.

18           Defendants Stern and Yagid assert as a defense that  
19   they were victims of entrapment by an agent of the Government.

20           The word "entrapment" that I just used is a legal  
21   term. It has a technical meaning, not that of popular speech  
22   or colloquial, ordinary usage. Therefore I must explain the  
23   word and meaning of "entrapment" as it is used in the law.

24           The function of law enforcement is not only the  
25   prevention of crime but also the detection and apprehension of

1 77kgs

618

2 criminals. Manifestly, that function does not include the  
3 manufacturing of crime. The defense of entrapment is based  
4 upon the policy of the law not to ensnare or entrap innocent  
5 persons into the commission of a crime. But a line must be  
6 drawn between the entrapment of the unwary innocent and the  
7 trap for the unwary criminal.

8 A basic feature of entrapment is that the idea or  
9 design of committing the crimes originated with a law enforce-  
10 ment officer rather than with a defendant; that the defendant  
11 had no previous disposition, intent or purpose to commit the  
12 alleged offenses, and that the law enforcement officer or  
13 Government employee implanted in the mind of an innocent  
14 person the disposition to commit the alleged offense and  
15 instigated and incited its commission in order that the defen-  
16 dant might be arrested and prosecuted.

17 If you find that an agent or employee of the Govern-  
18 ment merely afforded a favorable opportunity or facilities  
19 to the defendant for the commission of the alleged crime, such  
20 conduct on the part of the Government does not constitute  
21 entrapment. Entrapment would occur only if you find that the  
22 Government agents induced the defendant to commit the crime  
23 charged in the indictment and that the criminal conduct of  
24 the defendant was the product of the Government's activity.  
25

If you find any credible evidence creating the

1      78kgs

619

2      reasonable possibility that a Government agent or employee  
3      instigated and incited or otherwise induced the defendants  
4      to commit the crime charged, then the Government must prove  
5      beyond a reasonable doubt that such inducement was not the  
6      cause or creator of the crime, that is, that the defendant  
7      had been predisposed and willing to commit the crime.

8                If the prosecution has satisfied you beyond a  
9      reasonable doubt that the defendant was ready and willing to  
10     commit the offense charged, but was awaiting a favorable  
11     opportunity to commit the offense, then you may find that the  
12     inducement, if any, which brought about the actual offense,  
13     was no more than the providing of what appeared to the defen-  
14     dant to be a favorable or timely or convenient opening or  
15     facility for the criminal activity in which the defendant may  
16     have preferred to engage, and, in such circumstances, you  
17     may find that the Government agent has not seduced an innocent  
18     person or persons, but has only provided the means for the  
19     defendant to effectuate or realize his own then existing  
20     purpose.

21               I have now completed my charge about the specific  
22     crimes alleged in the indictment. I now address myself to more  
23     general considerations which you must bear in mind during your  
24     deliberations.

25               First, I must emphasize again that there are three

1      79kgs

620

2      defendants on trial here and as to each count, you must  
3      consider separately whether the specific defendant charged  
4      in that count has been proved guilty beyond a reasonable doubt.

5            It is your duty to give separate personal considera-  
6      tion to the case of each defendant. When you do so, you should  
7      analyze what the evidence in that case shows with respect to  
8      that individual, leaving out of consideration entirely any  
9      evidence admitted solely with regard to other defendants.

10     Each defendant is entitled to have his case determined from  
11     evidence as to his own acts and statements and conduct, and  
12     any other evidence in the case which may be applicable to him.

13     The fact that you may find one or more of the accused guilty  
14     or not guilty on any particular count should not influence  
15     your verdict with respect to the other defendants or with  
16     respect to any other count.

17           As I told you before, the Government has the burden  
18     of proving the charges against each defendant beyond a reason-  
19     able doubt. A defendant does not have to prove his innocence.  
20     A defendant has the right to remain silent. He does not have  
21     to testify, or present any evidence in his behalf and you may  
22     not draw any inference or conclusion or form any prejudice  
23     because a defendant did not testify or present evidence.

24           On the other hand, the law permits a defendant to  
25     testify in his own behalf if he wishes to do so. Mr. Yagid

1 80kgs

621

2 elected to testify. The testimony of a defendant must be  
3 considered by you as would the testimony of any other witness.  
4 You must determine the credibility of a defendant who testifie  
5 and in so doing, you must consider the deep personal interest  
6 which every defendant has in the outcome of his case. Indeed,  
7 it is fair to say that any defendant has the greatest stake  
8 in the outcome. The defendant's interest in the result of  
9 his trial is of a character possessed by no other witness.  
10 That interest requires that you receive such testimony with  
11 caution and in appraising its credibility, you may take the  
12 defendant's supreme interest into consideration.

13 However, it by no means follows that simply because  
14 a person has a vital interest in the end result, he is not  
15 capable of telling a truthful, candid and straightforward  
16 story. It is for you to decide to what extent, if at all, his  
17 interest has affected or colored his testimony.

18 Now, under your oath as jurors, you can't allow  
19 consideration of the punishment which may be inflicted upon  
20 a defendant, if he is convicted, to influence your verdict in  
21 any way or in any sense to enter into your deliberations.

22 The duty of imposing sentence rests exclusively on  
23 the Court. Your function is to weigh the evidence in the case  
24 and to determine the guilt or innocence of a defendant solely  
25 upon the basis of such evidence and the law.

2 You are to decide the case upon the evidence, and  
3 the evidence alone, and you must not be influenced by any  
4 assumption, conjecture or sympathy, or any inference not  
5 warranted by the facts.

6 If you fail to find beyond a reasonable doubt that  
7 the law has been violated, you should not hesitate for any  
8 reason to find a verdict of acquittal. But, on the other hand,  
9 if you find that the law has been violated as charged, you  
10 should not hesitate because of sympathy or any other reason  
11 to render a verdict of guilty.

12 I would like to point out that you should not enter  
13 the jury room with any preconceived pride of opinion. You  
14 should not be unwilling to be convinced by intelligent argu-  
15 ments with your fellow jurors. Each juror has to answer to  
16 his or her own conscience and each has to decide this case for  
17 himself or herself, but in so doing, you should be willing to  
18 consider the views of the other jurors and to talk things out  
19 and try your best to reach a unanimous agreement.

20 Your verdict must be one with which each juror  
21 agrees.

22 If during your deliberations you deem it necessary  
23 to have a copy of the indictment, or desire any of the  
24 exhibits, they will be sent in to you on request. If you  
25 find it necessary again to hear any of the tapes, they will

1 82kgs

623

2 be played. If you wish any portion of the testimony read or  
3 the Court's charge reread, that will be done.

4 In conclusion, let me say, every criminal case is  
5 important. It is important to the Government and it is  
6 important to the defendant. It is your obligation to decide  
7 the case on the evidence and on the law as I have charged it  
8 to you.

9 I give the case to you with the assurance that you  
10 will do just that.

11 Will counsel meet me in the robing room.  
12 (In the robing room.)

13 MR. RAO: Your Honor, firstly, relative to the  
14 testimony of the informer, "you are required however to consider  
15 the credibility of this witness and to do this, you must use a  
16 guideline which I gave you earlier." I respectfully submit  
17 that the guideline which you gave earlier was an ordinary  
18 witness and --

19 THE COURT: Come on. That charge is perfectly legal.  
20 I have given the guidelines with regard to that. Don't waste  
21 my time with that.

22 MR. RAO: Secondly, as to Allen, I had requested  
23 at the time Mr. Eberhardt brought out the fact of his prior  
24 conviction, I requested the Court to tell the jury that the  
25 prior conviction of a co-defendant is no evidence of the guilt

1 83kgs

624

2 of any of the defendants on trial here and gives rise to no  
3 inference against the defendants on trial, the fact he pled  
4 guilty.

5 The next point is at the end when your Honor starts  
6 with entrapment.

7 As to that I have asked your Honor in your request  
8 to charge to avoid the allusion to the innocent person since  
9 it might better be avoided relative to 346 Fed. 2d in the  
10 Morrison case.

11 Here in your charge you refer to the innocent person  
12 three times, your Honor. In addition thereto, I don't know  
13 whether or not the jury will understand, in your charge, where  
14 you say the crimes originated with a law enforcement officer  
15 rather than a defendant, law enforcement officer or Government  
16 employee. I think it should be specific that law enforcement  
17 officer is also considered Mr. Olsberg.

18 THE COURT: I have told the jury that when I said  
19 he was an informer.

20 MR. RAO: I submit I don't think it was.

21 THE COURT: All right. Next?

22 MR. RAO: The next was to your charge relative to  
23 the defendant Yagid.

24 THE COURT: About the fact he testified?

25 MR. RAO: When you said about his testimony, about

1 84kgs

2 him, how he should be judged. You stated he has the greater  
3 stake in the outcome and that is, defendant's interest is of  
4 supreme interest, and that his testimony should be treated  
5 with caution.

6 THE COURT: I don't think I said "supreme," did I?

7 MR. RAO: Yes. I respectfully request that a char  
8 about a defendant, his testimony should be treated as any  
9 other witness, and there should be no caution relative to hi  
10 testimony.

11 THE COURT: That is denied.

12 MR. NIGRONE: With respect to Mr. Badalamente, I  
13 join with Mr. Rao on the objections.

14 THE COURT: All objections are denied.

15 (In open court.)

16 THE COURT: Swear the marshal.

17 (Marshal sworn.)

18 THE COURT: Miss Silvermintz, I want to thank you  
19 for your services but they are now over. You may be excused.

20 Mrs. Catro and Mr. Mondelli, you are excused now  
21 also. However, I don't know how long the jury will be kept  
22 today. What I would want you to do is to call my clerk  
23 Monday morning at nine o'clock, call my chambers. If the  
24 jury is continuing its deliberations, I want you to report  
25 here at ten o'clock and sit in the jury room so we can be

**APPENDIX D**

**THE "ALLEN LETTERS"**



M. Robert H. Bork  
Attorney General

Department of Justice  
Washington, D.C.

Personnel

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29.07.51



I

LAUSANNE - OUCHY

TÉL. (021) 26 38 31 - TÉLEX 2 43 41 - TÉLÉGR. BEAURIVAGE LAUSANNE DIRECTION WALTER O. SCHNYDER

Monday

Dear Sir;

At present, I am  
under 2 industrys.  
in the Southern  
Destries - both of  
which Mr. Sorbie has  
labelled <sup>29.07.51</sup> "frisbe"  
"frisbe" OCT. 50  
O.R.O.  
CRIMINAL CRIME STB

III

I am going to

conduct a press

conference here -

detailing the

methods used by

Dome (Dom Loonan

for example) of

your investigators -

When I refused (without  
a court order) to  
trap and "tape"-

A number of key  
people - including  
my own lawyer -

Marty Stark Mar 7-883-

Sorkin named me -

It I am not a "pioneer"  
of virtue - but have  
refused to "stop"  
Roy Cohn for Mogenthal;  
I was actually  
named 1963 -  
(Lennard Hader) for  
alleged receiving  
\$150 - in an  
undictated - the file



Le « BEAU RIVAGE »  
LAUSANNE - OUCHY

TÉL (021) 26 38 31 - TÉLEX 2 43 41 - TÉLÉGR. BEAURIVAGE LAUSANNE DIRECTION WALTER O. SCHNYDER

I Ayler dismissed -  
Elles  
almost a Kafka -  
like nightmare -  
I cannot go  
home - Sorkin has

U  
ever threatened  
to have "parasites"  
planted on me -  
or my apartment -  
if I ~~did~~ refuse  
to "work" with  
him -

(5)

I have only  
glossed over details;  
the substance of  
what I have  
charged - will be  
Proven - at my  
Press Conference -

~~07/7~~

You can contact  
me by writing  
to ~~me~~

%

Hotel Savoy  
Zurich

---

Respectfully  
Jerry Allen



Le « BEAU RIVAGE »  
LAUSANNE - OUCHY

TÉL. (021) 26 33 31 - TÉLEX 2 43 41 - TÉLÉGR. BEAURIVAGE LAUSANNE DIRECTION WALTER O. SCHNYDER

X

Among the  
people Sorkin  
wanted me to  
see was Sister  
James Williams -  
I have  
met her the N.Y.

XI

I am afraid  
this case - and  
I have written  
to Senator Wilson

Please excuse  
my volatility  
Protocol -

PAUL J. CURRAN, ESQ., U.S. Attorney

January 10, 1974

Jerome R. Allen (U.S.A. v. Allen, et al. - 73 CR. 471)

On November 5th I sent you a memorandum enclosing a xerox copy of a letter from the above-named defendant making various charges against his treatment by members of your staff. I asked you to investigate the matter and report to me. To date I have not even received the courtesy of an acknowledgement of the communication.

You may take this memorandum as being a renewal of my request of November 5th. Mr. Allen is apparently still in Switzerland but presumably he will return to the United States some time this month and will then be available for trial.

November 5, 1973

Mr. Jerome R. Allen  
203 East 72nd Street  
New York, New York 10021

Dear Mr. Allen:

I have requested the United States Attorney to look into the matter which you have brought to my attention and to submit his conclusions to me. I shall advise you as soon as I hear from him.

Very truly yours,

RLC/lp

PAUL J. CURRAN, ESQ., U.S. Attorney

November 5, 1973

Jerome R. Allen    (U.S.A. v. Allen, et al - 73 CR. 471)

I enclose a xerox copy of a letter which is, I believe, from a defendant in a case now pending before me - U.S.A. v. Allen, et al. (73 CR. 471). It is self-explanatory. While it is difficult for me to give any credence to the assertions in the letter, the possibility that they may be true cannot be dismissed out of hand.

I am, therefore, requesting that you investigate this matter to determine whether Mr. Allen's assertions have merit. I would, of course, appreciate and request that you report your conclusions of your inquiry to me as expeditiously as you can. Moreover, I would be grateful if that report is made to me by you in person.

I do not intend, by the latter statement, to express any underlying suspicion that something may be amiss. It merely seems to me that since the matter involved concerns the integrity of your office that it is something that requires your personal attention and personal assurance to me that whatever the conclusions of the investigation are they are endorsed by you personally.

Enclosures:

III

OCT 25 1973

Le "BEAU RIVAGE"  
LAUSANNE - OUCHY

TÉL. (021) 26 38 31 - TÉLEX 2 43 41 - TÉLÉGR. BEAURIVAGE LAUSANNE - DIRECTION WALTER O. SCHNYDER

Judge Carter

Monday

I have written a letter  
to Judge Guerin - Please; you  
know; forgive my violatuz  
protocol - but I have  
been terrorized by an  
assistant U. S. attorney named  
cha Sorkin - and his  
side-kick; Tom Dooley.

ONLY COPY AVAILABLE

I stand indicted by  
Mr. Eberhardt on a  
case that will be  
heard before your Court -

Mr. Eberhardt has acted

in a proper way -

But Mr. Sorkin has  
insisted; using words and  
methods beyond natural

belief - that I tape

and entrap a

III

Number of prominent  
People - or the well  
"Crucify me" - tapes

Made without Court  
Authorization -

Unless I became  
the professional informer -  
Mr. Sorkin warned me -  
he would continually naming  
me in what he

10  
I used to do his "funkless"  
indictments -

He has badged my  
family - my friend has  
insisted seeing me without  
a lawyer - on many -  
many occasions -

When I finally  
exploded and told him  
that I would write  
to the court he  
said - "Don't bother - it  
won't help" Respectfully  
As always

Jerome R. Allen

(P.S.)

OCT 25 1973

203 East 72nd Street New York, N.Y. 10021

~~E~~ ~~BB~~

Among those he wanted  
me to type were Senator  
Davids - and Senator  
Harrison Williams -

He also  
insisted - in a  
Ridge - Thobel  
tape conversations  
with my own lawyer:

Marty Frank (NY 7-8930)

I well stand before you;  
Your honor; and swear  
as to the above  
statement -

I realize the  
impropriety of  
writing directly to  
you - but I am  
at the breaking post -  
so much so; that I'm  
almost afraid to come  
home -

Again, my apologies  
Very Ollie

(3)



Hotel Nova-Park - wo man sich trifft

1000 Betten in modernste, Zimmern, Bad, Telefon, Radio, TV-Anschluss, Résidence mit luxuriösen 1- bis 4½-Zimmer-Appartements, Nova Business Grill, Arte Nova, Nova Bar, Nova Taverne 1515, Nova-Nova-Night Club, Super Fitness-Club und Hallenbad, Konferenz- und Ausstellungszentrum, Informationszentrum, Schulungszentrum mit AV, Hotel Shops, Kollektivsekretariat, Nova Clubs, Nova Kinderclub, Bank, Reisebüro, Grossparkhaus für 1000 Autos.

Hotel Nova-Park, Badenerstrasse 420, 8004 Zürich, Telefon 01 542221, Telex: Hotel 52701

Wiederholung

Dear Mr. Eberhardt:

Contrary to what you  
may have heard - I'll be back  
in sufficient time to face  
trial - (Waiting & etc) or whatever  
else occurs -

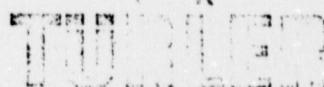
I have gone on record;  
perhaps defining protocol; as to

Mr. Seidenweber behavior -

in which it is understandable

that a projector such as the  
shape of a defensibility - there

Zürich, Paradeplatz  
Zürich, Hotel Nova Park  
Zürich-Kloten, Airport  
Luzern, Schwanenplatz 7  
Bern, Marktgasse 27



Für Uhren - mit Uhrer zu Türler

New York 10022  
515 Madison Avenue, Room 1009  
Tokio, Tenshodo Co. Ltd., 3-4 Ginza  
Repair Organisations in five Continents

ONLY COPY AVAILABLE

15. Should be reasonable limit as to  
the level of pressure... or  
illegal means... utilized -  
to coerce or defend -  
particularly the use of tapes -  
and other ~~extraordinary~~ techniques

Self Justice is denied  
by Canadian men; we  
have other progress; but  
a few years from  
Plato's cave -

I cannot fault  
your behavior - I will  
fight your charges - as  
best I can -

1000 Betten in modernsten Zimmern, Bad, Telefon, Radio,  
TV-Anschluss, Résidence mit luxuriösen 1- bis 4½-Zimmer-  
Appartements, Nova Business Grill, Arte Nova, Nova Bar,  
Nova Taverne 1515, Nova-Nova-Night Club, Super Fitness-Club  
und Hallenbad, Konferenz- und Ausstellungscenter,  
Informationszentrum, Schulungszentrum mit AV, Hotel Shops,  
Kollektivsekretariat, Nova Clubs, Nova Kinderclub, Bank,  
Reisebüro, Grossparkhaus für 1000 Autos.

Hotel Nova-Park - wo man sich trifft

bei Nova-Park, Badenerstrasse 420, 8004 Zürich, Telefon 01 54 2221, Telex: Hotel 52701

III It may be nice to  
note; a point; that Mr.  
Dorkin has the kind of  
Anglo-Saxon mentality that  
will ultimately manifest  
itself - like the time  
when his collar - and entire  
private practice - attacking  
the very methods he  
once utilized so  
skillfully -

Zürich, Paradeplatz  
Zürich, Hotel Nova Park  
Zürich-Kloten, Airport  
Luzern, Schwanenplatz 7  
Bern, Marktgasse 27



Für Uhren - mit Uhren zu Türler

New York 10022  
515 Madison Avenue, Room 1009  
Tokio, Tenshodo Co. Ltd., 3-4 Ginza  
Repair Organisations in five Continents

When Foley Square  
is nothing more than  
an antagonal ruin;  
Metrowire will ask - "What  
name of man - or men -  
administer justice there?"

A philosophical  
question - that I'm  
certain Charles J. M.  
Sorkin and his colleagues -  
They are too busy  
seeking headline -

Jewell

Hotel Nova-Park - wo man sich trifft

Appartements, Nova Business Grill, Arte Nova, Nova Bar, Nova Taverne 1515, Nova-Nova-Night Club, Super Fitness-Club und Hallenbad, Konferenz- und Ausstellungszentrum, Informationszentrum, Schulungszentrum mit AV, Hotel Shops, Kollektivsekretariat, Nova Clubs, Nova Kinderclub, Bank, Reisebüro, Grossparkhaus für 1000 Autos.

November 26, 1973

Dear Sir:

I initially wrote to you from Lauasaane but apparently no one could decipher my handwriting.

I am under two indictments, both, in a sense, are inter-related. (Southern District)..Ike Sorkin is the Assistant attorney on one case: Mike Eberhardt, ~~and~~ the other case. My remarks are directed only towards ~~Mike Eberhardt~~ Mr. Sorkin.

There is a sham practiced in Federal Courts wherein a defendant is asked by the Judge, as rout ne, "Have you been promised anything or threatened by the U. S. attorney?" In virtually every case, the answer is a meek "No..Sir."

When Mr. Sorkin initially called me down to Foley Square to seek my co operation in a number of SEC matters, he introduced me to a Tom Doonan, an investigator with the SEC. To say that the tactics they used, and continue to use, are Orwellian, is understatement. Mr. Sorkin asked me to "tape" my own attorney, Marty Frank. He also repeated a demand, as did Doonan, that I "set ~~the~~ up and tape a number of persons on their "hit parade"...among them Senator Harrison Williams, and ~~other~~ other prominent people with Wall Street orientations.

When I asked if they would secure a court order, they smiled as they replied.." We dont need court orders.....we want results."

When I balked a series of pressure unfolded; telephone calls to my answer service and friends, calls made by both of them, calls made at all hours; at times, they left embarrassing messages.

At one point when I adamantly refused to cooperate with them ~~at~~, their level...Doonan warned..." What would happen if, "by chance, someone found narcotics in your car, your apartment..." what would you do then..if we arranged an "arrest" on the spot? Since my strongest addiction is Diet Pepsi, even Sorkin blanched at the suggestion.

It is understandable that a government attorney should seek the cooperation of defendants, but I do not believe that their investigative behavior is above the law. Sorkin warned ~~me~~ that I would be named in an SEC indictment, even though, to quote him ".At best...it is a spurious case... we are naming you to break you down." And we'll name you over and over until you tape the people we want."

I am not a paragon of virtue. In 1968, I was indicted for having received \$ 700 to ghost write a stock market letter that was never published. When I refused to co-operate with the government: they named me in a second case charging I had been paid \$ 150. The second was thrown out of court by Judge Tyler. Before the first case was tried, the government ~~asked~~ me to tape Roy Cohn: I refused:

instead I gave Mr. Cohn a sworn affidavit stating that the government wanted me to trap and tape him. He used the affidavit and subsequently won his case.

~~What does he want~~

When I told Mr. Sorkin that I would contact your agency and that I would write directly to the Judge he stated, "If you contact the ACLU, I'll break you...one way or another."

I am not being poetic or dramatic. I will submit to a lie detector test. I doubt if Mr. Sorkin will.

Sorkin also "advised" me that he had embarrassing information as to my social life that he would "leak" to my family. He met with me ..alone..at the Waldorf Astoria.... again soliciting my assistance: and asking for something which I cannot spell out in this letter.

I am in Switzerland and my case ~~is~~ is due for trial on December 17. I am frankly terrified that when I return, Doonan will live up to his threat of "planting" some narcotics on my person...

This week, my former partner, Philip Stoller, was arrested at Kennedy Airport by Sorkin, Doonan and a Marshall, upon his return to the States from Switzerland. He was informed that he was under indictment for allegedly lying at an SEC hearing. It may be interesting to note that Sorkin forced, not only Mr. Stoller, but his wife and son to surrender their passports. He asked for \$ 750,000 bail....which may be a clue as to Sorkin's sense of balance.

He refused to permit Mr. Stoller to call his attorney <sup>back</sup> at the airport; by the time they arrived at Foley Square, his attorney had left for Thanksgiving. And Mr. Stoller, who has never been indicted or ~~accused~~ of a crime, was kept for two days in the House of Detention.

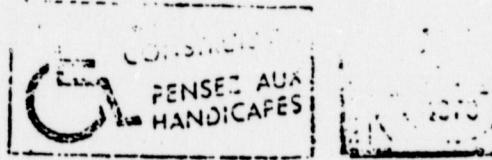
I am not a vestal virgin. But if the government can abide with the Gestapo tactics of some of their attorneys, then we are still in Plato's cave.

How much longer will the perjurious sham of a defendant parroting "No Sir" when asked if he was threatened, be permitted as routine?

At least I am condoning months of conversations with Sorkin and Doonan. Space limitations preclude a detailed resume. I received a long distance call from their office two weeks ago: someone..(I don't believe it was Sorkin).warned.."If you dont come back and turn ~~your~~ States evidence..we will see to it that your former wife ~~and~~ lose her job." Before I could reply, they hung up...will

Respectfully,

Jerry Allen



Mr  
Mrs  
Miss  
USA

Ira Sorkin  
S.E.C. Office  
Room 3016  
Foley Square  
New York N.Y.

ONLY COPY AVAILABLE



DEPARTEMENT  
DE JUSTICE ET POLICE  
PRISON  
DE SAINT-ANTOINE  
9, Chaudronniers  
1204 Genève  
DETENTION  
PREVENTIVE

Genève, le .....

19

Nom et prénom .....

RÈGLEMENT

1. Les prévenus peuvent recevoir une visite par semaine, soit le lundi, le mercredi ou le vendredi, de 9 h. 30 à 11 h. ou de 14 à 16 h. Elle a lieu au parloir en présence d'un gardien.

Les visiteurs doivent être munis d'une autorisation délivrée par le juge d'instruction compétent ou, pour les accusés, par le Parquet.

2. Les prévenus peuvent écrire quatre lettres par semaine, deux le samedi et deux le mercredi. Leur courrier, tant celui qu'ils reçoivent que celui qu'ils expédient, est soumis à la censure. Il en va de même des paquets. Ceux-ci peuvent parvenir à la prison tous les jours de 9 h. 30 à 11 h. et de 14 à 16 h. sauf le samedi, le dimanche et jours fériés.

3. Les correspondances renfermant des appréciations ou des observations sur l'établissement, ses employés, ses règlements, ou des injures à l'adresse du destinataire, ne sont ni expédiées, ni délivrées.

4. Il est interdit de mettre dans des récipients en verre ou en métal les denrées alimentaires (confitures, etc.) envoyées aux détenus. On utilisera de préférence des boîtes en carton huilé ou en plastique. L'envoi de charcuterie pendant les chaleurs n'est pas recommandé. Toutes les boissons sont prohibées ainsi que les produits en tubes, excepté les sirops de fruits (emballage plastique).

Il est interdit d'écrire entre les lignes et dans les marges.

The other night, I  
was part of the  
part of the Penn - Pittsburgh  
football game -  
I am not a "Bogey" web  
I am not a

Corn ball - but I must -  
I'm right back on the  
road side - The life of a  
Busted down boulders is  
a fiction -  
I miss my wife  
children - and I don't  
forget myself of all  
aspirations -

Well, - not the sort of recognition  
Committee that greets Bill -  
You can hold the green book forever - for a

1  
TICKETS  
PRO JUVENUTE  
En vente à la poste jusqu'au  
31 JANVIER



Elia Kazan  
Room 301  
U.S. Court House  
Foley Square  
Federal Building  
New York N.Y.

ONLY COPY AVAILABLE



DÉPARTEMENT  
DE JUSTICE ET POLICE  
PRISON  
DE SAINT ANTOINE  
9, Chaudronniers  
1204 Genève  
DÉTENTION  
PRÉVENTIVE

RÈGLEMENT

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Genève, le

Dec 22 1973

Nom et prénom

Jeanne Allin

I have been here since  
about a week ago - I am  
waiting here to pay my debts here.  
There is something unheroic about  
my current status. Romeo went  
down in the temple of Japon;  
Hector was destroyed before the  
walls of Troy; Hamlet died in  
the presence of the Royal Court;  
and Jerry Allin squats patiently  
in a Swiss jail because of a  
bank overdraft. Incidentally, I  
telephoned the jeweler in question  
at least two weeks before my arrest stating  
that I would make the check good. I  
have met with Mr. Head of the State  
Department and told him that I would  
not appear extradition. The state is but  
your office would ask for minimal bail;  
since I voluntarily requested going back  
to the U.S., I took on the veneer of  
an American abroad; preferring French  
wine; Italian soprano, and German doctor.

Il est interdit d'écrire entre les lignes et dans les marges.

Although I have been in another  
country, my pleasure and in ability  
I would gladly take a dinner at  
Maxim's in Paris; for a Nathan's  
Frankfurter; and a day off the  
Stadium to a stroll on the Champs-  
Elysée - the pressure being exerted upon me  
by certain people in the State - asking "me  
not to return to take on Gargantuan  
proportions. I have never operated on so "crimine  
scale; so why should I become a world  
gypsy? And so a tart; to the "Young Man  
That Was". To his dreams, for they were  
rainbow-coloured; to his appetites, for they  
were strong; to his blunders; for they were  
huge; to his beloved; for she was sweet;  
to his pain; for it was sharp; to his  
time; for it was brief. On the lotus  
land where the sunlight fades not,  
where the flowers are spring flowers;  
and the grass is an April green for  
ever; he still walks the fainting,  
tumultuous way. God pity we all - with what  
pitiful Colic here we brought our  
philosophy. Bring me back (thankful) from Allen

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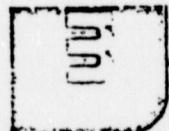
LT

IRA SORKIN US COURT HOUSE FOLEY SQUARE

NEWYORK

BACK ON OCTOBER 30 SECURED NECESSARY MATERIAL UNDER EXTRA ORDINARY  
PRESSURE TO PREVENT TRIP

ALLEN  
SF-1201 (R5-69)  
COL LT 30



APPENDIX E

APPELLANT'S REQUESTS TO CHARGE

(Numbers 5, 9, 10)

REQUEST NO. 5

*Schlesinger*

ENTRAPMENT

"The function of law enforcement is the prevention of crime and the apprehension of criminals. Manifestedly this function does not include the manufacturing of crime by government officials or by agents of the government." Sherman v. United States, 356 U.S. 369, 372, 78 S.Ct. 819, 820.

The defendants Yagid and Stern raise the defense of entrapment.

"The fact that the government officials or their agents merely afford opportunities to one who is ready and willing to violate the law when the opportunity presents itself does not constitute entrapment." United States v. Rosner, 485 F.2d 1213, 1222 n. 11 (2nd Cir. 1973). "However, a different question is presented when the criminal design originates with the officials of the government and they implant in the minds of persons who are not disposed to violate the law the disposition to commit the alleged offense and induce its commission in order that they may prosecute." United States v. Russell, 93 S.Ct. 1637, 1644. "For Congress could not have intended criminal punishment for a defendant who has committed all the elements of a prescribed offense, but who was induced to commit them by the government." United States v. Russell, supra at 1644.

Thus, "Entrapment occurs only when the criminal conduct was the product of the creative activity of the law enforcement officials or their agents, that is, if they initiate, incite, induce, persuade or lure persons" (Rosner, *supra*, 1222 n. 11) who otherwise were "not ready and willing without persuasion" to commit such crime and therefore were not just "awaiting any propitious opportunity to commit said offense". *United States v. Sherman*, 200 F.2d 880, 882 (2nd Cir. 1952). *United States v. Weiser*, 428 F.2d 932, 934 (2nd Cir. 1969).

In this regard, the defendants Yagid and Stern assert they were induced, or persuaded, or incited, or lured, to violate the law by the conduct of Olsberg, the government agent, both by Olsberg's conduct in direct discussions with Yagid and thereafter with Stern and also by Olsberg's utilization of the New Jersey land venture, the C. W. Deaton financing and the letter of credit transactions in California, as well as the Stutz motor car loan, as a means to apply pressure on Stern and Yagid (*United States v. Rosner*, at 1222) to commit the crime charged.

"If the prosecution has satisfied you beyond a reasonable doubt that the defendants Stern and Yagid were ready and willing to commit the crime charged and merely were awaiting a favorable opportunity to commit it, then you may find that the government did

no more than furnish a convenient opening for the criminal activity in which the defendants were prepared to engage" (Rosner at 1222). "In such circumstances, you may find that the government agent has not seduced or instigated" (Rosner 1222, n. 11) defendants Stern and Yagid's illegal acts "in the sense of having induced them to do what they otherwise would not have been willing to do." United States v. Romano, 278 F.2d 202, 204 (2nd Cir. 1960).

"On the other hand, if you have a reasonable doubt as to whether the defendant would have committed the charge unless there was inducement by the government, then it is your duty to acquit them", Rosner, supra, 1222 n.11. For the government cannot by instigation lure the defendants Yagid and Stern to the commission of a crime the defendants otherwise would not have committed just so that the government can punish them, Sorrells v. United States, 287 U.S. 435, 448, 53 S.Ct. 210, 215.

N.B. United States v. Morrison, 348 F.2d 1003, 1005 (2nd Cir. 19 ).  
Allusion to the otherwise "innocent person" should be avoided.

REQUEST NO. 9

*in substance*

TESTIMONY OF INFORMER

The testimony of an informer who provides evidence against a defendant for pay, or for immunity from punishment, or for personal advantage as to other crimes charged against him, must be examined and weighed by the jury with greater care and scrutiny than the testimony of an ordinary witness (United States v. Masino, 275 F.2d 129, 133 (2nd Cir. 1960). The jury must determine with careful scrutiny whether the informer's testimony has been affected by such interest, financial or otherwise, against the defendant. Federal Jury Practice & Instruction, Devitt & Blackmore, Volume I, Sec. 12:02, page 255. Jury Instructions in Federal Criminal Cases, La Buy, Sec. 608, page 50.

REQUEST NO. 10

*in substance  
plus more*

CREDIBILITY OF DEFENDANT

A defendant who wishes to testify is a competent witness, and the defendant's testimony is to be judged in the same way as that of any other witness. Federal Jury Practice and Instructions, Sec. 12.11.

I certify that a copy of this Brief  
and Appendix was served today by hand  
on the United States Attorney, Southern  
District of New York.

William Eggers

June 10, 1974